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January 8, 2016

VIA ECF

The Honorable Charles R. Breyer
United States District Court
450 Golden Gate Avenue
San Francisco, CA 94102

Re: *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation*, MDL 2672 Application for Appointment to Plaintiffs' Steering Committee

Dear Judge Breyer:

I am uniquely qualified to help lead this litigation based on my clients' substantial presence in this MDL, my experience in leading other major car defect litigation, and my standing among all major decision-makers with a stake in this social problem.

Client Interests: To date, more than five thousand owners of the affected cars have retained me to represent them against Volkswagen. I have some 5,201 cases to file directly into this MDL and additional cases will be transferred here from the Southern District of Texas.¹ Having me on the leadership committee will ensure the smoothest possible coordination between these plaintiffs and any classes of plaintiffs that might be certified. Purely as a practical matter, Volkswagen will have to contend with these clients' claims, and that process will be most effective and efficient if their lawyer is formally a part of the plaintiffs' leadership.

Experience in Other Auto Cases: I am currently one of three Co-Lead Counsel in *In re General Motors LLC Ignition Switch Litigation*, MDL 2543, a massive litigation arising from the defective ignition switch that GM installed in millions of vehicles. For a host of reasons, including my substantial client base of 1,153 clients, the Honorable M. Jesse Furman (contact: 212-805-0282) designated me as counsel with primary responsibility for the personal injury and death cases.² My seamless coordination with co-lead counsel permitted an early resolution of the bulk of my clients' claims. For the claims that were not resolved, I am lead trial counsel, again coordinating with class counsel, for the first bellwether trial beginning January 11, 2016.

¹ I am counsel in the following filed cases: *Tamez v. Volkswagen Group of America, Inc.*, No. 2:15-cv-00425 (S.D. Tex.), and *Harris v. Volkswagen Group of America, Inc.*, No. 2:15-cv-00405 (S.D. Tex.).

² Judge Furman did not appoint me based on deals among the "good ol' boys club" of the plaintiffs' bar. The "agreed" leadership structure had not included me despite my abilities and client base. See Amanda Bronstad, "Good Ol' Boys Club" In MDL, National Law Journal (Sept. 28, 2015); Amanda Bronstad, *Q&A: Look for More Oversight of MDL Lawyers in 2016*, National Law Journal (Dec. 30, 2015).

* Mr. Hilliard is Board Certified in Personal Injury Trial Law and Civil Trial Law by the Texas Board of Legal Specialization

* Mr. Gonzales is Board Certified in Personal Injury Trial Law by the Texas Board of Legal Specialization

*Mr. Pinedo is licensed to practice law in Texas, Arizona, and California

*Ms. Fornecker is licensed to practice law in New York

* Ms. Chaplin is licensed to practice law in Texas and Massachusetts

* Mr. Penot is licensed to practice law in Texas and Louisiana

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Earned Trust and Confidence: A major international corporation systematically cheated people and governments. The overall resolution of this social problem may well require coordination of plaintiffs' efforts with other decision-makers such as federal, state, and international regulators, criminal prosecutors, and Congressional leaders. For over two years in the GM litigation, I facilitated communication and coordination among all the interested parties. I worked closely with the Senate Commerce Committee, including Senators Blumenthal and Baldwin (Consumer Protection Product Safety Sub-Committee) and Representative Tim Murphy (Chairman of the Energy and Commerce Subcommittee on Oversight & Investigations), and coordinated national efforts with major public interest organizations such as Public Citizen and the Center for Auto Safety. Kenneth Feinberg consulted with me on the design of the GM compensation fund and publicly credited me for the increased minimum payments to victims. Based on my work in the GM litigation and other auto cases, including the Toyota Sudden Acceleration cases, in 2015 the National Law Journal named me the Elite Trial Lawyer of the Year for Motor Vehicle Litigation.

I have earned the trust and confidence of other decision-makers who are already poised to play major roles in resolving this social problem. Appointing me to leadership in this MDL will ensure that there is a known, ready, and trusted link to these other forums.

EXPERIENCE IN PROSECUTING COMPLEX LITIGATION

I am the founding partner of Hilliard Muñoz Gonzales, LLP (1984 – present) and Hilliard & Shadowen, LLP (2012 – present). In addition to the GM MDL discussed above, I have served as a leader in the following recent cases:

- *In Re Toyota Unintended Acceleration Litigation*, Tex. MDL No. 2010-46354 (Co-Liaison Counsel). Honorable Robert Schaffer (contact: 713-368-6040).
- *In re General Motors LLC Ignition Switch Litigation*, Tex. MDL No. 2014-51871 (Co-Lead Counsel). Honorable Robert Schaffer (contact: 713-368-6040).
- *Vella v. Bristol Meyers Squibb*, No. 2:12-cv-00296 (S.D. Tex.) (lead trial lawyer for 15 patients killed or injured during Bristol-Myers Squibb's testing of an experimental drug for Hepatitis C). Honorable Nelva Gonzales Ramos (contact: 361-693-6455).
- *In re: Risperdal Litigation (Banks v. Janssen Pharmaceuticals, Inc. et al.; Bentley v. Janssen Pharmaceuticals, Inc., et al.)*, No. 0618 (Pa.) (lead trial counsel in products liability claims). Honorable Arnold New (contact: 215-686-7260).
- *Alexander, et al. v. Gulf Stream Coach, Inc., In Re FEMA Trailer Product Liability Litigation*, MDL No. 1873 (E.D. La.) (Plaintiffs' Steering Committee). Honorable Kurt D. Engelhardt (contact: 504-589-7645).
- *In Re Ocwen Loan Servicing, LLC Mortgage Servicing Litigation*, Tex. MDL No. 07-0037 (Liaison Counsel). Honorable Karen Gren Scholer (contact: 214-550-4653).

I not only lead complex cases, I try them to verdict, and have tried more than 100 jury trials. The first GM bellwether trial is expected to be concluded in early February 2016.

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RESOURCES

I am willing and able to commit the necessary time and resources to pursue this matter to its completion. I have access to more than 50 attorneys and staff members, with the ability to increase personnel as required. The firms' offices are in Corpus Christi and Austin, Texas.

PUBLIC INTEREST

I view service in this MDL as an extension of my commitment to using litigation to effect social change and compensate victims of corporate and institutional wrongdoing. This commitment is longstanding and deep. For example:

- I was a 2011 Public Justice National Trial Lawyer of the Year Finalist for the pro bono representation of Koua Fong Lee, a Hmong refugee, who served three years of a six-year prison sentence for vehicular homicide in Minnesota as a result of an accident involving his runaway Toyota. I successfully led a four-day evidentiary hearing proving the sudden unintended acceleration of Mr. Lee's Toyota and culminating in his immediate and permanent release from custody. All charges were dropped, and I received the Never Forgotten Award from the Innocence Project of Minnesota. Honorable Ann D. Montgomery (contact: 612-664-5090).
- I am lead counsel in a series of cases challenging the U.S. Border Patrol's policy of using lethal force against persons across the border in Mexico who allegedly throw rocks at agents in the U.S. My clients include surviving family members of an unarmed, unthreatening 15-year-old bystander and a father who was a bystander in another incident while on a picnic with his wife and two young children. Under pressure from this litigation, as well as condemnation from Congressional leaders and international human rights organizations, the Border Patrol recently announced sweeping revisions to its use-of-force policies.

The legal fall-out from the old policy continues, with a landmark ruling from a panel of the United States Court of Appeals for the Fifth Circuit in *Hernandez v. United States*, 2013 WL 2932598 (5th Cir. 2014), that a non-U.S.-citizen injured outside the territorial United States could bring a *Bivens* action against U.S. agents. The Court sitting en banc vacated that decision, and the Supreme Court has asked for the Solicitor General's views on plaintiffs' *certiorari* petition.

- I filed a lawsuit aimed at forcing Major League Baseball to extend the safety netting down the baselines. *Payne et al. v. Office of the Commissioner of Baseball (d/b/a Major League Baseball), et al.*, No. 4:15-cv-03229 (N.D. Cal.). Honorable Yvonne Gonzales Rogers (contact: 510-637-4010). While this case is still in its infancy, MLB altered its policy to require all member teams to comply with this common-sense safety measure.

Respectfully submitted,

/s/ Robert C. Hilliard

ROBERT C. HILLIARD

Exhibit A: Curriculum Vitae of Robert C. Hilliard

Exhibit B: List of Counsel Supporting Appointment of Robert C. Hilliard